



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 22 2015

Brian G. Svoboda, Esq.
Tyler J. Hagenbuch, Esq.
Perkins Coie
700 13th Street, NW, Suite 600
Washington, DC 20005-3960

RE: MUR 6966
(formerly 15-02)
Democratic Party of Wisconsin
and Randy A. Udell in his
official capacity as treasurer

Dear Messrs. Svoboda and Hagenbuch:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission ("the Commission") became aware of information suggesting that your clients, the Democratic Party of Wisconsin and Randy A. Udell in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 15, 2015, the Commission notified the Committee that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 52 U.S.C. § 30109. On September 17, 2015, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)), a provision of the Act, and 11 C.F.R. § 106.7(d)(1). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

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If you are interested in engaging in pre-probable cause conciliation, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the

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Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,



Ann M. Ravel
Chair

Enclosures
Factual and Legal Analysis

ENCLOSURE

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS: Democratic Party of Wisconsin**
6 **and Randy A. Udell¹ in his**
7 **official capacity as treasurer**

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10 **I. INTRODUCTION**

11 This matter was generated by a Commission audit of the Democratic Party of Wisconsin
12 ("DPW") covering the period of January 1, 2011, through December 31, 2012. The Commission
13 approved the Final Audit Report on March 25, 2015, and the Audit Division referred the
14 following two findings to the Office of the General Counsel ("OGC") for possible enforcement
15 action: (1) DPW misstated its disbursements in 2011; and (2) DPW failed to maintain required
16 monthly payroll logs to document the percentage of time each employee spent in connection with
17 a federal election. OGC notified DPW of the referral, and DPW filed a response, reiterating the
18 substantive arguments previously presented and considered by the Commission during the audit
19 process. DPW also requests that the Commission close the file and take no further action
20 because it claims to have used best efforts in reporting; the errors were *de minimis*; maintaining
21 monthly payroll logs is burdensome; and the failure to maintain these logs did not result in a
22 finding that it used non-federal funds for federal activity. For the reasons discussed below and
23 the facts, analysis, and findings set forth in the Final Audit Report, which is herein incorporated
24 by reference, the Commission finds reason to believe that DPW violated 11 C.F.R. § 106.7(d)(1)
25 by failing to maintain monthly payroll logs, and violated 52 U.S.C. § 30104(b) by misstating its
26 disbursements for 2011.

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1 Michael F. Childers was the treasurer of record during the relevant period, the 2011-12 election cycle.

II. FACTUAL AND LEGAL ANALYSIS

A. Failure to Maintain Monthly Payroll Logs

Commission regulations provide that salaries, wages, and fringe benefits “[paid] to State, district, or local party committee employees who spend 25% or less of their time in a given month on Federal election activity or on activity in connection with a Federal election” may be allocated as administrative costs; *i.e.*, may be paid with a combination of funds from the committee’s federal and non-federal accounts.² Commission regulations also provide that when allocating salary, wage, and fringe benefit payments, political party committees are required to “keep a monthly log of the percentage of time each employee spends in connection with a federal election.”³

As set forth in the Final Audit Report, the Commission found that DPW failed to maintain monthly payroll logs for \$2,221,526 in payments. Of that amount, DPW disclosed \$2,192,554 as having been paid with an allocation of federal and non-federal funds, and \$28,972 as having been paid from an exclusively non-federal account during the periods in which the employee was also paid with federal funds.⁴

DPW acknowledges that it did not keep payroll logs, but argues for a dismissal because the recordkeeping requirement is burdensome and the Audit Report does not contain a finding that DPW used non-federal funds for federal activity.⁵ The logs are necessary to ensure that it

² 11 C.F.R. §§ 106.7(c)(1), d)(1)(i), and (d)(2).

³ 11 C.F.R. § 106.7(d)(1).

⁴ Final Audit Report at 13.

⁵ Resp. at 7.

1 was permissible for DPW to allocate the payments that are the subject of the audit finding.⁶

2 Accordingly, the Commission finds reason to believe that DPW violated 11 C.F.R. § 106.7(d)(1).

3 **B. Misstatement of Disbursements**

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5 The Act requires committee treasurers to file reports of disbursements in accordance with
6 the provisions of 52 U.S.C. § 30104(b). The Audit staff reconciled DPW's reported financial
7 activity with its bank records and determined that DPW misstated its disbursements resulting in
8 an understatement of \$184,702 in 2011. The understatement resulted from: (1) in-kind
9 contributions, not reported as disbursements (\$2,565); (2) vendor refunds reported as negative
10 entries on Schedule B (Itemized Disbursements) rather than as an offset to operating
11 expenditures on Schedule A (Itemized Receipts) (\$57,545); (3) unreported transfers to
12 non-federal accounts (\$15,119); (4) unreported disbursements and fees (\$111,793); (5) reported
13 disbursements, not supported by a check or debit (-\$7,317); (6) unreported vendor fees (\$4,451);
14 and (7) unexplained differences (\$546).⁷

15 DPW does not dispute the audit findings and acknowledges that Commission regulations
16 require that disclosure reports be accurate,⁸ but it nevertheless argues that the Commission
17 should not pursue this matter because DPW met the standard for "best efforts" by timely filing
18 all of its disclosure reports in 2011 and 2012 despite a high volume of activity, and that the
19 "small handful" of errors discovered by the Audit Division are *de minimis*.⁹ DPW also asserts
20 that it cooperated with the Commission during the audit by correcting its reporting errors on

⁶ See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49,079 (July 29, 2002) (revised explanation and justification).

⁷ See Final Audit Report at 10.

⁸ See 11 C.F.R. § 104.14(d).

⁹ Resp. at 4, 5, 6 (June 3, 2015).

1 amended disclosure reports, it did not act in bad faith, and it did not make or receive excessive or
2 prohibited contributions.¹⁰

3 While it is true that DPW timely filed all of its reports, the reports must also be accurate,
4 and in this instance, the Audit Division discovered material errors on DPW's disclosure reports
5 and the Commission determined that DPW did not demonstrate best efforts.¹¹ Therefore, the
6 Commission finds reason to believe that DPW violated 52 U.S.C. § 30104(b).

¹⁰ *Id.* at 7.

¹¹ See Final Audit Report at 9; 52 U.S.C. § 30102(i) and 11 C.F.R. § 104.7(a).